

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

WILLIE GREEN,

Petitioner,

V.

CAROL MECI,

Respondent.

Civil Action No. 04-10360-JLT

PETITIONER WILLIE GREEN'S MOTION
FOR A CERTIFICATE OF APPEALABILITY

Willie Green, the petitioner in the above-captioned action, hereby moves this Court pursuant to 28 U.S.C. § 2253, Fed.R.Civ.P. 22, and First Circuit Local Rule 22.1, to issue a Certificate of Appealability (“COA”) as to all of the federal constitutional claims raised in his petition for a writ of habeas corpus and as to all issues resolved adversely to the Petitioner by this Court, including but not limited to, the following:

1. Whether the state trial court's refusal to instruct on defense of another violated Petitioner's federal due process rights to present a defense.
2. Whether the state trial court's erroneous refusal to instruct on defense of another violated Petitioner's federal due process and Sixth Amendment jury trial rights to have a jury determine whether he was guilty beyond a reasonable doubt as to every element or fact necessary for conviction.
3. Whether the state trial court's erroneous refusal to instruct on defense of another violated Petitioner's federal due process rights that require the Commonwealth to prove his guilt beyond a reasonable doubt.
4. Whether the Massachusetts Appeals Court's decision that the state trial court's erroneous failure to instruct the jury on defense of another was harmless violated Petitioner's

federal due process and Sixth Amendment rights to have a jury determine his guilt in light of the Supreme Court's ruling in *Neder v. United States*, 527 U.S. 1 (1999).

5. Whether this Court erred in ruling that Petitioner was not entitled in this habeas proceeding to *de novo* review of certain of his constitutional claims, including: (1) his claim that his federal due process rights to present a defense were violated by the erroneous failure to instruct on defense of another, (2) his claim that his federal due process and Sixth Amendment rights to have a jury determine whether he was guilty beyond a reasonable doubt as to every element or fact necessary for conviction were violated by the erroneous refusal to instruct on defense of another, and (3) his claim that the Massachusetts Appeals Court violated his federal due process and Sixth Amendment rights to have the jury determine his guilt by ignoring and/or failing to apply established Supreme Court precedent (*Neder*).

6. Whether this Court erred in ruling that the Massachusetts Appeals Court's decision was not "contrary to" clearly established Supreme Court precedent.

7. Whether this Court erred in ruling that the Massachusetts Appeals Court's decision was not an "unreasonable application" of federal law.

8. Whether this Court erred in ruling that the Massachusetts Appeals Court's decision was harmless under the standard established by *Brecht v. Abrahamson*, 507 U.S. 619, 638 (1993), and its progeny.

The grounds for the issuance of a COA are set forth in the accompanying Memorandum of Law, which is hereby incorporated by reference in its entirety. As demonstrated in the Memorandum, Petitioner has made a substantial showing of the denial of his constitutional rights by the state courts and has also shown that this Court's assessment of his constitutional rights is wrong or at least reasonably debatable. *Miller-El v. Cokerell*, 537 U.S. 322, 337 (2003).

For the reasons expressed in the Memorandum, the Court should issue a COA.

DATED: February 14, 2006

Respectfully submitted,

/s/Philip G. Cormier

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CERTIFICATE OF SERVICE

I hereby certify that on February 14, 2006, I caused a copy of the above document to be served by first class mail, postage pre-paid, to Assistant Attorney General Susanne G. Reardon, Office of the Attorney General, Criminal Bureau, One Ashburton Place, Boston, MA 02108.

/s/Philip G. Cormier

Philip G. Cormier

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